

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	CRIMINAL NO. 05-10019-RGS
)	
v.)	
)	
DANIEL W. MCELROY, and)	
AIMEE J. KING MCELROY,)	
)	
Defendants.)	
_____)	

GOVERNMENT'S RESPONSE TO THE DEFENDANTS'
RESPONSE TO THE COURT ORDER REGARDING THE CONSENT JUDGMENT

The defendants have filed a Response to the Court Order Regarding the Consent Judgment, which, despite its title, does not in fact respond to the Court's Order of January 23, 2008. The pertinent passage in the Order stated:

The motion to redact the consent judgment [Exhibit 3] entered by Aimee King is ALLOWED in part. Rather than blank pages and obvious excisions, the court will permit the government to introduce the cover (first) page and the signature (last) page of the decree with the injunctive language regarding cash payments set out on a separate attached and unnumbered page. Defendant may propose the inclusion on that page of any other language in the decree that they believe is relevant and/or exculpatory.

Instead of proposing to include additional material on the blank page, the defendant proposed further redactions (that were unarticulated in either their motion in limine or in court), and actual edits, including the changing of sentences. Such doctoring of the exhibit is unnecessary and would tend only to mislead the jury. Subject to the Court's redactions, the exhibit should reflect what Judge Zobel said in her order.

The Court's redactions make sense. The exhibit now reflects that the judgment was imposed, the statutory authority for Judge Zobel's remedy, the pertinent injunctive language

about cash payments, and Aimee King's acknowledgment. As the Court's January 23 Order reflects, the exhibit is now at an irreducible bottom. Although it is difficult to conceive how the document at this point is unfairly prejudicial, the government would not oppose an instruction that the jury should disregard the redactions. The Court should otherwise reject the defendants' proposed modifications.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/Jonathan F. Mitchell
JONATHAN F. MITCHELL
SARAH E. WALTERS
Assistant U.S. Attorneys
U.S. Attorney's Office
U.S. Courthouse, Suite 9200
1 Courthouse Way
Boston, MA 02210

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2008, I served a copy of the Government's Response to the Defendants' Response to the Court Order Regarding the Consent Judgment by electronic filing on counsel of record for the defendants.

/s/ Jonathan F. Mitchell
Jonathan F. Mitchell